

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

TINOCO,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 2014 CV 3079
	)	
ACAR DURDAGI d/b/a ACAR DISCOUNT	)	Hon. Young B. Kim
MUFFLER AND BRAKE,	)	
	)	
Defendant.	)	

**PRETRIAL ORDER**

1.     **Jurisdiction.** Federal question jurisdiction exists because the plaintiff made claims under the laws of the United States, namely, for violation of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. 201 *et seq.* Section 16(b) of the FLSA provides for a private right of action.

This court has supplemental jurisdiction over the plaintiff’s state law claims for violation of the Illinois Minimum Wage Law (“IMWL”), 820 ILCS 105/1 *et seq.*, violation of the Illinois Wage Payment and Collection Act (“IWPCA”) 820 ILCS 115/1 *et seq.*, common law conversion, and common law fraud, under 28 U.S.C. 1367(a).

The parties have each waived their respective jury demands and this matter is set for a bench trial.

2.     **Length of trial.** The parties expect this trial to last 1 day.
3.     **Statement of Claims and Defenses.** The plaintiff claims the defendant failed to pay him proper overtime compensation as required by

the FLSA and the IMWL. Specifically, the plaintiff claims the defendant paid him a fixed amount of money per week even though he was not an “exempt” employee, and even though the actual number of hours the plaintiff worked sometimes fluctuated. The plaintiff claims the defendants docked his pay when he was absent, but did not increase it when he worked more hours than he was normally scheduled to work. The plaintiff alleges that, by paying him in this manner, the defendants failed to pay him overtime compensation at a rate not less than one and one-half times his regular (de facto) hourly rate.

Additionally, the plaintiff claims the defendant withheld more money from his pay checks than he paid to the Internal Revenue Service (“IRS”) and the Illinois Department of Revenue (“IDOR”), converting the balance of the money to his own use. The plaintiff also alleges that the defendant fraudulently misrepresented that the money withheld from the plaintiff’s paychecks was being paid to the IRS and the IDOR as indicated on the check stubs.

The defendant denies the plaintiff’s allegations, claims the plaintiff failed to state a claim under the FLSA, the IMWL and the IWPCA, and claims that he acted in good faith with regard to his obligations under these statutes. The defendant also claims the plaintiff failed to mitigate his damages.

No counterclaims or cross claims have been filed.

**4. Witnesses.**

**THE PLAINTIFF WILL CALL:**

- a. Humberto Tinoco (The Plaintiff)  
May be contacted through his attorneys
- b. Raul Rodriguez

2447 S. Central Park  
Chicago, IL 60623

**THE PLAINTIFF MAY CALL:**

- c. Acar Durdagi (The Defendant)  
May be contacted through his attorneys
- d. Oscar R. Tesoro a/k/a Oscar Bellechasse

3147 W. Logan Blvd.  
Suite 8  
Chicago, IL 60647  
(773) 252-2111

**5. Schedule of Exhibits.**

<b>Pltf. Exhibit</b>	<b>Pages</b>	<b>Description</b>
A	56	Employee Time Sheets
B	1	Employee Time Sheet
C	12	Pay Stubs for 2013
D	6	Demonstrative Exhibit - Actual Deductions from Pay Checks
E	1	Form W-2 for 2013
F	12	Tax Returns for 2013
G	2	Additional Check Stubs
H	1	Demonstrative Exhibit - Difference in Actual vs. Reported Deductions 2013

6. **Itemization of Damages.**

Item	Amount
Unpaid Overtime	\$10,039.95
Liquidated Damages (FLSA)	\$10,039.95
Unpaid Regular Wages	\$7,437.00
Penalties (IWPCA)	\$4,154.00 <sup>1</sup>
Converted Tax Funds	\$1,714.52
Attorneys' Fees and Costs	TBD
<b>TOTAL</b> (excluding fees/costs)	<b>\$33,385.42</b>

7. **Status of Settlement Negotiations.** The parties had been scheduled for a settlement conference with this Court. The conference was cancelled, however, because the defendants indicated that they were unwilling to make a monetary offer.

8. **Proposed Findings of Fact and Conclusions of Law.** See **Appendix 2.**

Respectfully submitted,

/s/  
One of the Defendant's Attorneys

L. Steven Platt  
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/s/Paul Luka  
One of the Plaintiff's Attorneys

Paul Luka  
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(312) 971-7309

DATE: \_\_\_\_\_

ENTER: \_\_\_\_\_  
Hon. Young B. Kim  
United States Magistrate Judge

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<sup>1</sup> See **Appendix 1.**

# Appendix 1



# **Appendix**

## **2**

**IN THE UNITED STATES DISTRICT COURT  
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Plaintiff,	)	
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	)	
Defendant.	)	

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

By and through their attorneys of record, the parties submit the following proposed findings of fact and conclusions of law:

**Findings of Fact**

1. During the period relevant to the complaint, from about March 2012 through about April, 2014, (the “Relevant Period”) the defendant owned and operated an automotive repair shop at 958 N. California Avenue, Chicago, Illinois.
2. During the Relevant Period, the defendant owned and operated the repair shop as a sole proprietor.
3. During the Relevant Period, the plaintiff worked at the defendant’s automotive repair shop as an automobile repair and service technician.
4. During the Relevant Period, the plaintiff performed tasks while working at the defendant’s repair shop including but not limited to: a) oil changes; b) tire rotations; c) brake jobs; d) tune ups; e) muffler and exhaust system repair and replacement; and f) air conditioning system recharges.

5. During the Relevant Period, and in the course of his work at the defendants' repair shop, the plaintiff handled motor oil and other petroleum products, acetylene, cleaning solvents, tires, Freon and hardware.

6. During the Relevant Period, the defendant, Acar Durdagi, was the plaintiff's direct supervisor; and the plaintiff had no boss/es other than the defendant, Acar Durdagi.

7. On numerous occasions during the Relevant Period, the plaintiff processed the defendant's customers' credit cards by running them through a "point of service" payment machine.

8. During the Relevant Period, the plaintiff was scheduled to work Monday through Friday from 8:00 a.m. to 5:30 p.m. with an hour break for lunch (42.5 hours with lunches subtracted), and on Saturday from 8:00 a.m. to 2:30 p.m. with a half hour break for lunch (6 hours with lunches subtracted).

9. During the relevant period the plaintiff was scheduled to work 48.5 hours per week.

10. The parties are in dispute about the actual number of hours that the plaintiff worked each week. The plaintiff alleges he was often required to stay later than 5:30 p.m. on Monday through Friday, and later than 2:30 p.m. on Saturdays. The defendant denies this and alleges that the plaintiff was often late to work and often left early.

11. During the Relevant Period, the defendant paid the plaintiff a set, weekly salary of \$550.00.

12. During the Relevant Period, when the plaintiff would take a day off work, the defendant would dock his pay at the rate of \$91.66 per day ( $\$550.00 / 6 = \$91.66$ ).

### **Conclusions of Law**

13. During the Relevant Period, the defendant was the plaintiff's employer as defined by Section 203(d) of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*

14. During the Relevant Period, the plaintiff was an employee of the defendant as defined by Section 203(e)(1) of the FLSA.

15. During the Relevant Period, the defendant was the plaintiff's employer as defined by as defined by Section 3(c) of the Illinois Minimum Wage Law ("IMWL"), 820 ILCS 105/1 *et seq.*

16. During the Relevant Period, the plaintiff was an employee of the defendant as defined by Section 3(d) of the IMWL.

17. During the Relevant Period, the defendant was the plaintiff's employer as defined by Section 2 of the Illinois Wage Payment and Collection Act ("IWPCA"), 820 ILCS 115/1 *et seq.*

18. During the Relevant Period, the plaintiff was an employee of the defendant as defined by Section 2 of the IWPCA.

19. During the Relevant Period, the plaintiff was not exempt, under Section 213 of the FLSA, from the maximum hour (overtime) provisions of the FLSA (Section 207).

20. During the Relevant Period, the plaintiff was not exempt, under Section 105/4(a)(2) of the IMWL, from the maximum hour (overtime) provisions of the IMWL (Section 105/4(a)(1)).

21. During the Relevant Period, the defendant operated an enterprise as defined by Section 203(r)(1) of the FLSA.

22. During the Relevant Period, the defendant operated an enterprise engaged in commerce or in the production of goods for commerce as defined by Section 203(s)(1)(A) of the FLSA.

23. During the Relevant Period, the plaintiff was covered by Section 207 (overtime) of the FLSA in that he was employed by an enterprise engaged in commerce or in the production of goods for commerce. *See* 29 U.S.C. 207(a)(1).

24. During the Relevant Period, the plaintiff was covered by Section 105/4a (overtime) of the IMWL in that he was an employee as defined by the IMWL.

Respectfully submitted,

/s/  
One of the Defendant's Attorneys

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